

From: ewaldfernbach@compuserve.com@inetgw
To: Microsoft ATR
Date: 1/26/02 12:21am
Subject: Microsoft Settlement

Dear Honorable Judge Kollar-Kotally ,

my name is Ewald Fernbach, I am working as IT manager for Vector Labs, 30 Ingold Rd., Burlingame, CA, 94087.

Regarding the proposed settlement for the antitrust lawsuit against Microsoft I have the following concerns:

The settlement fails to terminate the Microsoft monopoly, and instead guarantees Microsoft's monopoly will survive and be allowed to expand into new markets. All monopolies must be carefully watched to make sure they don't abuse their monopoly position. Indeed, many monopolies are either broken up or carefully regulated in order to protect the public interest. Why is Microsoft allowed a waiver to this general rule? Does the Justice Department think that Microsoft is going to suddenly change its operating methodology? The proposed deal with the justice department does not address the fact that Microsoft has abused its monopoly and is likely to do so again, and again, and again in the future to the detriment of others.

The proposed settlement does not address Microsoft's proven ability to retaliate against would-be competitors and to, in effect, appropriate the intellectual property of its competitors - and even its partners - in fact all who do business with Microsoft. The Appeals court found such past conduct by Microsoft highly egregious yet the Agreement does not address these issues. Again, many of us have been on the receiving end of these types of Microsoft bullying tactics.

Bolting. The proposed settlement, as far as I understand it, does not address the issue that fueled consumer criticism and which gave rise to this antitrust case in 1998: Microsoft's decision to bind - or "bolt" - Internet Explorer to the Windows operating system in order to crush its browser competitor Netscape. This settlement gives Microsoft "sole discretion" to unilaterally determine that other products or services which don't have anything to do with operating a computer are nevertheless part of a "Windows Operating System product." This creates a new exemption from parts of antitrust law for Microsoft and would leave Microsoft free in future versions to bolt financial services, cable television, or the Internet itself into Windows.

Non MS standards. The Court of Appeals affirmed that Microsoft had unlawfully and intentionally deceived Java developers and "polluted" the Java standard in order to protect its monopoly and defeat competition. Yet, the proposed settlement does not restrict Microsoft's ability to modify, alter or refuse to support computer industry standards, including Java, or to engage in campaigns to deceive developers of rival platforms, middleware or applications software. Indeed, Microsoft's decision not to distribute Java technologies with Windows XP, which hurts developers and consumers alike, will be the shape of things to come under the proposed deal unless the Court requires Microsoft to continue to support accepted industry standards such as Java technologies, even if they do not originate from Microsoft.

Middleware. As part of the proposed settlement, Microsoft is required to allow the PC manufacturers to hide Microsoft middleware programs and allow them to install icons or links to competing middleware programs. The only problem is that the PC manufacturers are not allowed to remove the code that could

be used to reactivate Microsoft's middleware programs. In other words, two weeks into owning the machine, a consumer could be asked if they want to reconfigure their desktop, install all the Microsoft middleware and delete all the competitor's middleware, which many users would undoubtedly do, without really knowing what they are doing. If they then would find out that the reinstalled Microsoft product is inferior to the competitors product, they would not have an easy way to fall back to the previous settings.

Communication Protocols. The settlement states that Microsoft must now share information on how its middleware and server software work together with Windows. However, Microsoft does not have to disclose this information for middleware it does not distribute separate from Windows, or for middleware it has not trademarked. This leaves the door open for 'bolting' discussed above. If Microsoft wants to drive a competitor out of business, they just attach the specific type of software the competitor is involved with to their Windows platform. Once they do that, they do not have to share the API's and other basic information that is needed by the competitor to ensure its software works with Windows. And without reliable access to 90% of the PC's in the world - no competitor can survive. Once the competitor is out of business, Microsoft can separate the software from the Windows package, sell it separately and derive huge margins. In addition, Microsoft does not have to disclose their information to companies that in "their view" do not have a "viable business" (defined as selling at least 1 million units in the previous year).

This loophole will allow Microsoft to hamper new software start-ups from becoming true competitors simply if in Microsoft's 'view' they are not a "viable business". Who can really say which new start-up is a "viable business"? Certainly this should not be left to the judgment of a voracious monopolist.

Lastly, Microsoft does not have to disclose this coding information if Microsoft deems such disclosure would harm the company's security or software licensing. There is no provision to say who is to make this determination, leaving it on a defacto basis up to Microsoft

Enforcement of Settlement Compliance. The proposed settlement requires a three-man compliance team to oversee Microsoft's compliance with the Agreement. Microsoft will appoint one person, the Justice Department another, and the third will be chosen by the two people already appointed. In essence, Microsoft will control half the team. This new team will not be allowed to inform the public of their work, and cannot impose fines. In addition, the work of the committee cannot be admitted into court in any enforcement proceeding. The committee's sole remedy for infractions is for them to inform the Justice Department of the infraction and then the Justice Department will have to conduct their own research and commence litigation to stop the infraction. The Justice Department does not need a compliance group to tell them when Microsoft is doing something wrong, so in reality this group is just a smoke screen and will waste taxpayers money.

In conclusion I think that the proposed settlement has nothing to do with justice but represents the capitulation of the judicial system of the USA. The message this settlement sends is: 'you can get away with anything if you have enough money in your corner'. This is a very dangerous and discouraging message for corporations as well as for individuals and will definitely add to the already significant corrosion of the publics trust in their country's judicial system.

To me it looks like with the proposed settlement the Justice Department is trying to pretend that justice has been served, whereas in reality Microsoft was able to put itself above the law.

As citizen of this country and as computer user I urge you to do everything to prevent Microsoft from continuing its detrimental business practices. I strongly oppose to accepting the proposed settlement in

the form discussed above and I suggest a thorough revision of the whole case.

Best Regards

Ewald Fernbach